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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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425 POST ROAD
FAIRFIELD CT 06430-6232

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EXAMINER

GANTT, A

ART UNIT

PAPER NUMBER

2684

DATE MAILED: 10/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|------------------------------|--------------------------------------|---|
| Office Action Summary | Application No. 09/074,093 | Applicant(s) Conway Robert Shaw |
| | Examiner Alan Gantt | Group Art Unit 2684 |

Responsive to communication(s) filed on Aug 21, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-22 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 8/21/00 have been fully considered. Applicant primarily argues that:

- a. There is no motivation in Rydbeck to utilize a pivoting arrangement as in Nagai.
- b. The only basis for the proposed reference combination is hindsight.
- c. The applicant's invention solves two significant problems: (1) a telephone capable of single-handed operation and (2) moving the antenna away from the face of the user without risking damage to the antenna or should the antenna be placed on a flat surface.

Regarding (a) and (b), applicant's invention has strong similarities to the telephone of the Rydbeck reference. It could be argued that applicant's invention is a different embodiment of Rydbeck and possibly be rejected as a single reference 103 rejection. Nagai is introduced as a teaching reference because it has an antenna that can be pivoted in a single plane through an acute angle. And since it's antenna can be adjusted to move away from the head in that single plane, one with knowledge of the two could easily envision an embodiment of Rydbeck from observing what Nagai's telephone does mechanically. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of

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ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding (c), it is quite conceivable that a person with normal dexterity could maneuver the antenna of Rydbeck with a combination of the thumb and the index finger. Nagai appears to be capable of flat faced positioning or, if not as shown in the patent, with slight modification to be able to reach that position as pressure is applied from above [while lying on a flat surface].

Thus, the examiner stands behind the previously cited references as valid in rejecting applicant's invention claims.

Claim Rejections - 35 U.S.C. § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydbeck, in view of Nagai.

Regarding claims 1, 2, 4, 5, 7-12, 17, 18, and 21; Rydbeck discloses a canted antenna for a cellular radiotelephone that is movable between a first position and a second position. In the

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first position, the antenna is substantially parallel to the face of the radiotelephone . In the second position, the antenna is canted away from the face of the radiotelephone thus increasing the distance from the user's head and the antenna during use (col.1, lines 56-67). The angular orientation caused by the second position defines an arrangement of the antenna and the radiotelephone such that the axis and the imaginary plane defined by the extended front face of the radiotelephone form an acute angle. Thus, the antenna moves through this acute angle from the first position to the second position when observed along the plane joining the first and second position (col. 2, lines 10-27). The first position is also thought of as a storage position and reduces the profile of the radiotelephone (col. 3, lines 4-10). Rydbeck makes use of a boss having an angled surface connecting one end of the antenna to permit the movement from the first position to the second position. Rydbeck does not utilize a pivot to permit single plane movement between the two positions.

Nagai teaches the use of a hinge to provide pivotable movement about a hinge for its rotating antenna type portable radiotelephone apparatus. The antenna moves through a single plane with the purpose of reducing the adverse affects of interference from the human body. The antenna may be rotatably positioned on one end of the hinge section or both ends of the hinged section (col. 1, lines 48-61). There are abuts and groove fittings involved with the hinge section that permit the antenna to be secured at both ends of hinge section (Figures 2 and 3c [refs 32 ,33, and 34a-c] and col. 2, line 49 to col. 3, line 39 and col 4, lines 45-46).

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Rydbeck and Nagai are combinable because they share a common endeavor, namely, radiotelephones that incorporate antennas that move away from the user's head. At the time of the applicant's invention, it would have been obvious to modify Rydbeck to use hinging mechanism as done by Nagai to permit the fastest and most efficient means of moving the antenna from the first position to the second position.

Regarding claims 3, 6, 19, and 20, depending on the hinging configuration of Rydbeck, as well as the groove configuration, the antenna will tend to be moved towards one or both positions (col. 2, line 49 to col. 3, line 39).

Regarding claim 13, the rotating antenna provided by Nagai produces a plan of rotation that is perpendicular to the front surface of the radiotelephone (Figure 4b).

Regarding claim 14, helical antennas are known to be configured inside housing as the one illustrated in Rydbeck and they are known to have the flexibility to make this canted position possible. Therefore, it would have been obvious for Rydbeck to utilize helical antenna structures in canted antenna radio telephones because of their physical flexibility and strong availability in the industry.

Regarding claim 15, Rydbeck's preferred embodiment provides for the phone's speaker to be positioned on the phone's front face and mounted adjacent to the top edge [the edge where the antenna is located] (col. 3, lines 35-46).

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Regarding claim 16, Rydbeck's preferred embodiment, as is typical with radiotelephones, places the microphone at the bottom of the front face, away from the antenna at the top (Figure 2 and col. 3, lines 35-46).

Regarding claim 22, Nagai utilizes stop members for holding positions between a first and last position (Figures a, b, and 3c).

Conclusion

Any inquiry concerning this communication from the examiner should be directed to Alan Gantt at telephone number (703) 305-0077. The Examiner can normally be reached between 8:30 a.m. and 5:00 p.m. EDT. The group FAX number is (703) 308-6306.

Any inquiry of a general nature or relating to the status of the application should be directed to the group receptionist at telephone number (703) 305-3900.

Alan Gantt

Alan Gantt

October 20, 2000

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PRIMARY EXAMINER

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